30905

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 423.

THE UNITED STATES AND THE KIOWA AND COMANCHE INDIANS, APPELLANTS,

vs.

THOMAS C. ANDREWS.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

THOMAS C. ANDREWS, *vs.* THE UNITED STATES AND THE KIOWA AND COMANCHE INDIANS.	No. 7836, Indian Depredation.

I. *Petition.—Filed July 23, 1892.*

To the Honorable the Court of Claims:

The claimant, who is now a resident of Tarrant County, State of Texas, respectfully represents:

First. That the following described property, then belonging to him, was taken from his possession without his consent, by Indians of a tribe or nation then in amity with the United States, without just cause or provocation on the part of the claimant or any of his agents, and the same has never been returned or paid for, to wit:

335 beef steers, of the value of $20 each	$6,700.00
15 saddle horses, of the value of $75 each	1,125.00
14 saddle horses, of the value of $100 each	1,400.00
Total	$9,225.00

Second. That said property was taken as aforesaid by a band, tribe, or nation of Indians known as the Kiowa and Comanches on or about the middle of June, 1876, or 1877, in the Indian Territory, near the Ouchita River.

Third. No claim for said losses has heretofore been presented for examination and payment to any Department of the Government.

Fourth. Claimant alleges that he is entitled to relief and payment of his claim under act of Congress of March 3, 1891, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," and the acts therein referred to.

Fifth. Claimant alleges that he is now the sole owner of said claim; that he is justly entitled to the amount herein claimed from the United States, after allowing all just claims and offsets; that he is a citizen of the United States, and he believes the facts stated in this petition to be true.

Your petitioner therefore prays judgment upon the facts and the law, in the sum of nine thousand two hundred and twenty-five dollars ($9,225.00), less fifteen per cent thereof, or so much as judgment may be rendered for, as compensation to his attorney of record, for prosecuting this case, and in whose favor he asks this court to render judgment in that sum.

SILAS HARE,
Attorney for Claimant.

STATE OF TEXAS, *County of Tarrant, ss:*

Thomas C. Andrews, being duly sworn, deposes and says, I am the claimant in this case. I have read above petition, and the matters

therein stated are true to the best of my knowledge, information, and belief.

THOMAS C. ANDREWS.

Witness—
STUART HARRISON.

Subscribed and sworn to before me this 14th day of June, 1892.
[SEAL.] STUART HARRISON,
A Notary Public in and for Tarrant County, Texas.

2 II. *Defendants' plea.—Filed May 10, 1899.*

Now comes the Assistant Attorney-General, and after leave of the court first had and obtained for plea to the declaration filed herein, says that the claimant ought not to have and maintain his said cause of action, because at the date of the alleged depredation the claimant was wrongfully and unlawfully within the Indian country, and was therefore a trespasser and cannot recover.

HARRY PEYTON,
Actg. Assistant Attorney-General.

3 III. *Findings of fact and conclusion of law.*

This case having been heard by the Court of Claims, the court upon the evidence makes the following

FINDINGS OF FACT.

I.

At the time of the depredation, hereinafter stated, the claimant was a citizen of the United States.

II.

In June, 1877, while the claimant, with a large number of cattle, was travelling over the Chisom trail, the same being an established trail, en route from Texas to a market in Kansas, and while camped on the Washita River, on the Kiowa and Comanche Indian Reservation, in the Indian Territory, Indians belonging to the Kiowa and Comanche tribe of Indians took and drove away property of the kind and character described in the petition, the property of the claimant, which was then and there reasonably worth the sum of $8,300.

Said property was taken as aforesaid, without just cause or provocation on the part of the owner or the agent in charge, and has never been returned or paid for.

III.

At the time of the said depredation the defendant Indians were in amity with the United States.

CONCLUSION OF LAW.

Upon the foregoing findings of fact, as a conclusion of law, that the claimant, Thomas C. Andrews, recover judgment against the United States and the Kiowa and Comanche Indians for the sum of eight thousand three hundred dollars ($8,300.00).

It is ordered that out of the said judgment the sum of one thousand two hundred and forty-five dollars (1,245.00) be allowed and paid to Silas Hare, esq., claimant's attorney of record, in full for services in this case.

BY THE COURT.

4 IV. *Judgment of the court.*

THOMAS C. ANDREWS
vs.
THE UNITED STATES AND THE KIOWA AND COMANCHE tribes or nations of Indians. } Indian depredation No. 7836.

At a Court of Claims held in the city of Washington, on the 14th day of May, A. D. 1900, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Thomas C. Andrews, claimant, do have and recover of and from the United States and the Kiowa and Comanche tribes or nations of Indians, committing the wrong for which this judgment is rendered, the sum of eight thousand three hundred dollars, of which sum there is allowed Silas Hare, esquire, the claimant's attorney, for prosecuting said claim, the sum of twelve hundred and forty-five dollars, fixed by the court according to the provisions of the act of March 3, 1891, chapter 538, section 9 (1 Supplement of Revised Statutes, 2d edition, pages 915, 916).

BY THE COURT.

5 V. *Application of defendants for and allowance of appeal.*

THOMAS C. ANDREWS
vs.
THE UNITED STATES AND KIOWA AND COMANCHE Indians. } No. 7836, Indian depredation.

Now comes the Assistant Attorney-General and moves for the allowance of an appeal from the judgment of this court in the above-entitled cause, rendered on May 14, 1900, to the Supreme Court of the United States.

JOHN G. THOMPSON,
Asst. Attorney-General.

P. J. FINN,
Asst. Attorney.

Filed June 9, 1900.

At a Court of Claims held June 11, 1900, the foregoing application for appeal was allowed as prayed for.

BY THE COURT.

6 In the Court of Claims.

THOMAS C. ANDREWS *vs.* THE UNITED STATES AND THE KIOWA AND COMANCHE INDIANS.	No. 7836, Indian depredation.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 18th day of September, A. D. 1900.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 17908. Court of Claims. Term No. 423. The United States and the Kiowa and Comanche Indians, appellants, vs. Thomas C. Andrews. Filed September 20, 1900. Office Supreme Court of U. S. Received Sept. 20, 1900.

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